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Attorneys for Plaintiff Robert Stone

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Robert Stone, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

U.S. Security Associates, Inc., a Delaware corporation, and Does 1 through 10,

Defendants.

**Case No.
CLASS ACTION**

Complaint and Demand for Jury Trial

Plaintiff Robert Stone ("Plaintiff") alleges:

1. This class action alleges that certain policies and practices followed by Defendants U.S. Security

Associates, Inc. and the Doe Defendants in furnishing, using, procuring, and/or causing to be procured consumer reports for employment purposes violate the provisions of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. 1681, *et seq.* Specifically, Defendants violated Section 1681b(b) of the FCRA by furnishing, using, procuring, and/or causing to be procured consumer reports for employment purposes by failing to make proper disclosures required thereunder and/or by failing to make and/or obtain the required certifications required thereunder.

JURISDICTION AND VENUE

2. The Court has jurisdiction under 15 U.S.C. Section 1681p.
3. Venue is proper in this Court under 28 U.S.C. Section 1391(b) because the Defendants regularly do business in this district.

INTRADISTRICT ASSIGNMENT

4. This matter is properly assigned to the San Francisco or Oakland Division of this District pursuant to Civil Local Rule 3-2 because Defendant U.S. Security Associates, Inc. does business in such Division.

PARTIES

5. Robert Stone (“Plaintiff”) is a resident of California and is a “consumer” protected by the FCRA.
6. The FCRA defines a “person” as “. . . any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental sub-division, or other entity.”
7. Defendant U.S. Security Associates, Inc. (“USSA”) is believed to be Delaware corporation.
USSA is a “person” as defined by the FCRA.
8. The FCRA defines a “consumer report” as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, mode of living which is used or expected to be used for. . . (B) employment purposes.”
9. USSA, as standard practice, routinely procures or causes to be procured “consumer reports” from

1 consumer reporting agencies about its employees or prospective employees for employment
2 purposes.

3 10. Plaintiff does not presently know the true names and capacities of the defendants named as Does
4 1 through 10 and therefore sues such defendants by these fictitious names. Plaintiff believes that
5 the Doe Defendants are persons or entities who are involved in the acts set forth below, either as
6 independent contractors, suppliers, agents, servants or employees of the known defendants, or
7 through entering into a conspiracy and agreement with the known Defendants to perform these
8 acts, for financial gain and profit, in violation of Plaintiff's and Class Members' rights. Plaintiff
9 will request leave of Court to amend this Complaint to set forth their true names, identities and
10 capacities when Plaintiff ascertains them.

11 11. Each of the Defendants has been or is the principal, officer, director, agent, employee,
12 representative and/or co-conspirator of each of the other defendants and in such capacity or
13 capacities participated in the acts or conduct alleged herein and incurred liability therefor. At an
14 unknown time, some or all of the Defendants entered into a conspiracy with other of the
15 Defendants to commit the wrongful acts described herein. These wrongful acts were committed
16 in furtherance of such conspiracy. Defendants aided and abetted each other in committing the
17 wrongful acts alleged herein. Each of the Defendants acted for personal gain or in furtherance of
18 their own financial advantage in effecting the acts alleged herein.

19 **First Claim for Relief against Defendant U.S. Security Associates, Inc.**

20 **Violation of 15 U.S.C. Section 1681b(b)(2)**

22 12. Plaintiff realleges all of the preceding paragraphs.

23 13. 15 U.S.C. Section 1681b(b) regulates the conduct of "persons" who furnish, use, procure or
24 cause to be procured a "consumer report" for employment purposes as follows:

25 (b) Conditions for furnishing and using consumer reports for employment purposes

26 (1) Certification from user

27 A consumer reporting agency may furnish a consumer report for employment purposes
28 only if --

(A) the person who obtains such report from the agency certifies to the agency that--

(i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and

(ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and

(B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this subchapter, as prescribed by the Bureau under section 1681g(c)(3) of this title.

(2) Disclosure to consumer

(A) In general

Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless--

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure*, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person. . . . (Emphasis added.)

14. In or about February 2014, Plaintiff applied for a job with USSA. As part of the application process, Plaintiff was presented with and executed an Applicant Consent Form. (See Exhibit 1 hereto.)
15. Thereafter, USSA procured or caused to be procured a consumer report regarding Plaintiff from a credit reporting agency.
16. USSA violated Section 1681b(b)(2) by procuring or causing to be procured consumer reports for employment purposes regarding Plaintiff and other class members without making the required disclosure “in a document that consists solely of the disclosure” by including provisions in the Applicant Consent Form other than the required disclosures required by the FCRA.

1 17. USSA knew or should have known about its legal obligations under the FCRA. USSA obtained
2 or had available substantial written materials that apprised it of its duties under the FCRA. Any
3 reasonable employer or consumer reporting agency knows about or can easily discover these
4 obligations. USSA either knew or recklessly failed to know the disclosure requirements of
5 Section 1681b(b)(2) and knew or recklessly failed to know that including provisions other than
6 the requisite disclosures in a disclosure form and authorization form for employment was facially
7 contrary to the express language of Section 1681b(b)(2) and all of the administrative guidance
8 available and violated the law. Despite knowing of these legal obligations, USSA intentionally
9 and/or recklessly acted consciously in breaching its known duties and depriving Plaintiff and
10 other Class members their rights under the FCRA.

11 18. As a result of these FCRA violations, USSA is liable for statutory damages from \$100 to \$1,000
12 for each violation pursuant to 15 U.S.C. Section 1681n(a)(1)(A), punitive damages pursuant to
13 15 U.S.C. Section 1681n(a)(2), and attorney's fees and costs pursuant to Section 1681n and
14 Section 1681o.

15 19. 15 U.S.C.A. § 1681p provides:

16 An action to enforce any liability created under this subchapter may be brought in any
17 appropriate United States district court, without regard to the amount in controversy, or in
18 any other court of competent jurisdiction, not later than the earlier of—
19 (1) 2 years after the date of discovery by the plaintiff of the violation that is the
20 basis for such liability; or
21 (2) 5 years after the date on which the violation that is the basis for such liability
22 occurs.

23 20. The violation that is the basis of liability of this claim is the procurement or the causing of the
24 procurement of a consumer report without making the required disclosure "in a document that
25 consists solely of the disclosure."

26 21. Plaintiff discovered Defendant USSA's violation(s) within the last two years when he learned for
27 the first time that Defendant USSA had in fact procured and/or caused to be procured a
28 "consumer report" regarding him for employment purposes based on the illegal disclosure and

1 authorization form.

2
3 **CLASS ACTION ALLEGATIONS**

4 22. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this claim for
5 himself and on behalf of a class initially defined as follows:

6 **USSA Class**

7 All persons residing in the United States (including all territories and other political
8 subdivisions of the United States) as to whom U.S. Security Associates, Inc. or any of its
9 related companies procured or caused to be procured a consumer report for employment
10 purposes within the period prescribed by FCRA, 15 U.S.C. §1681p without first
11 providing a clear and conspicuous disclosure in writing to the consumer at any time
before the report was procured or caused to be procured, in a document that consists
solely of the disclosure, that a consumer report may be obtained for employment
purposes.

12 23. **Numerosity. Fed. R. Civ. P. 23(a)(1).** The members of the Class are believed to be in excess of
13 500 and are so numerous that joinder of all members is impractical. The names and addresses of
14 the Class members are identifiable through documents maintained by the Defendants, and the
15 Class members may be notified of the pendency of this action by published and/or mailed notice.

16 24. **Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ. P.
17 23(a)(2).** Common questions of law and fact exist as to all members of the Class. These
18 questions predominate over the questions affecting only individual members. These common
19 legal and factual questions include, among other things:

20 a. Whether Defendants violated Section 1681b(b) by procuring or causing to be procured
21 consumer reports for employment purposes without making the required disclosure “in a
22 document that consists solely of the disclosure” as required by Section 1681b(b)(2)(A)(i).
23 b. Whether Defendant’s violations were willful.

24 25. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff’s class claims are typical of the claims of Class
25 members. Plaintiff for class certification purposes seeks only statutory and punitive damages. In
26 addition, Plaintiff is entitled to relief under the class claims as the other members of the Class.

27 26. **Adequacy. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate representative of the Classes

1 because Plaintiff's interests coincide with, and are not antagonistic to, the interests of the
2 members of the Class Plaintiff seeks to represent. Plaintiff has retained counsel competent and
3 experienced in class action litigation, and Plaintiff intends to prosecute this action vigorously.
4 The interests of members of the Class will be fairly and adequately protected by Plaintiff and
5 Plaintiff's counsel.

6 27. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the Class members
7 predominate over questions affecting only individual members, and a class action is superior to
8 other available methods for fair and efficient adjudication of the controversy. The statutory and
9 punitive damages sought by each member are such that individual prosecution would prove
10 burdensome and expensive given the complex and extensive litigation necessitated by
11 Defendants' conduct. It would be virtually impossible for the members of the Class individually
12 to redress effectively the wrongs done to them. Even if the members of the Class themselves
13 could afford such individual litigation, it would be an unnecessary burden on the Courts.
14 Furthermore, individualized litigation presents a potential for inconsistent or contradictory
15 judgments and increases the delay and expense to all parties and to the court system presented by
16 the complex legal and factual issues raised by Defendants' conduct. By contrast, the class action
17 device will result in substantial benefits to the litigants and the Court by allowing the Court to
18 resolve numerous individual claims based upon a single set of proof in a case.

19 WHEREFORE, Plaintiff demands a jury trial and requests that judgment be entered against all
20 Defendants as follows:

- 21 1. For an order certifying the proposed FCRA classes under Federal Rule 23 and appointing
22 Plaintiff and Plaintiff's undersigned counsel of record to represent same;
- 23 2. For statutory damages;
- 24 3. For punitive damages;
- 25 4. For attorney's fees and costs;
- 26 5. For interest as provided by law;

1
6. For such other and further relief as the Court deems proper.

2 Dated: January 16, 2015

3 THE DION-KINDEM LAW FIRM

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6 BY: _____

7 PETER R. DION-KINDEM, P.C.
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PETER R. DION-KINDEM

Attorney for Plaintiff Robert Stone

Exhibit 1



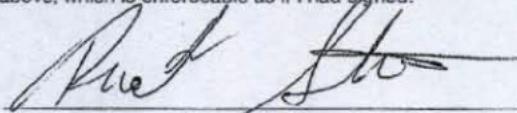
U.S. SECURITY ASSOCIATES, INC.

APPLICANT CONSENT FORM

1. I understand that an investigation report may be generated on me that may include information as to my character, general reputation, personal characteristics, or mode of living; work habits, performance or experience, along with reasons for termination of past employment/professional license or credentials; financial/credit history; education history; or criminal/civil/driving record history. I understand that an Agent Organization on behalf of U.S. Security Associates (USA) may be requesting information from public and private sources about any of the information noted earlier in this paragraph in connection with U.S. Security Associates consideration of me for employment, promotion or position re-assignment or contract now, or at any time during my tenure with U.S. Security Associates, and give my full consent for this information to be obtained. I also authorize this information to be released to clients of U.S. Security Associates.
2. IF APPLICABLE, medical and worker's compensation information will only be requested in compliance with the Federal Americans with Disabilities Act (ADA) and/or any other applicable state laws. According to the Fair Credit Reporting Act (FCRA, Public Law 91-508, Title VI), I am entitled to know if the considerations for which I am applying are denied because of information obtained from a consumer reporting agency. If so, I will be notified and be given the name of the agency providing that report.
3. I acknowledge that an electronic, telephonic facsimile (FAX) or photographic copy of this release shall be as valid as the original. This release is valid for most federal, state and county agencies.
4. I understand that if I am a resident of California, Minnesota or Oklahoma (only) I may obtain a copy of the report ordered, and now indicate my desire to do so by checking this box. California candidates see "Notice to California Candidates" in box below.
5. I hereby authorize, without reservation, any financial institution, law enforcement agency, information service bureau, school, employer or insurance company contacted by a background investigation company to furnish the information described in Section 1.
6. Communications with USA should be addressed to U.S. Security Associates, Inc., ATTN: Compliance Manager, 200 Mansell Court, Fifth Floor, Roswell, GA 30076 or call 800-730-9599.

COMPLETE THE FOLLOWING:

By electronically submitting my personal information on this form, I understand and agree to the conditions stated in the Consumer Authorization section above, which is enforceable as if I had signed.



Signature

2-11-14

Date

ROBERT DARRYL STONE
Please print full name

The following information is required by law enforcement agencies and other entities for positive identification purposes when checking public records. It is confidential and will not be used for any other purposes.

[REDACTED] Month, Day & Year of Birth [REDACTED]

Social Security Number [REDACTED]

[REDACTED] Home Address [REDACTED]

City [REDACTED]

State [REDACTED]

ZIP [REDACTED]

[REDACTED] Driver's License Number [REDACTED]

Drivers License State [REDACTED]

ROBERT DARRYL STONE
Name as it appears on the License

FAIR CREDIT REPORTING ACT NOTICE:
In accordance with the Fair Credit Reporting Act (FCRA, Public Law 91-508, Title VI), this information may only be used to verify a statement(s) made by an individual in connection with legitimate business needs. The depth of information available varies from state to state. Update status is available on request. Although every effort has been made to assure accuracy, Agent Organization obtaining this information for U.S. Security Associates, Inc. cannot act as guarantor of information accuracy or completeness. Final verification of an individual's identity and proper use of report contents are the user's responsibility. The Agent Organization for U.S. Security Associates, Inc. policy requires purchasers of these reports to have signed a Service Agreement. This assures the Agent Organization that users are familiar with and will abide by their obligations, as stated in the FCRA, to the individuals named in these reports. If information contained in this report is responsible for the suspension or termination of an employee or the application process, have the Candidate/ employee contact the Agent Organization.

NOTICE TO CALIFORNIA CANDIDATES:

You have a right to obtain a copy of any consumer report obtained by U.S. Security Associates, Inc by checking the box in paragraph IV above. The report will be provided to you within three (3) business days after we receive the requested reports related to the matter investigated. Under section 1786.22 of the California Civil Code, you may view the file maintained on you by our Agents during normal business hours. You may also obtain a copy of this file upon submitting proper identification and paying the costs of duplication services, by appearing at U.S. Security Associates, Inc. in person or by mail. You may also receive a summary of the file by telephone. The agency is required to have personnel available to explain your file to you and the agency must explain to you any coded information appearing in your file. If you appear in person, a person of your choice may accompany you, provided that the person furnishes proper identification.

PLEASE SEE BACK OF FORM FOR ADDITIONAL REQUIRED INFORMATION

Social Security Number _____

ALIASES1. Have you ever been known by any other name? Yes No

2. If yes, list other names used: First Name Middle Name Last Name

First Name	Middle Name	Last Name

3. Have you ever used two names as your last name (such as Jones-Smith), whether or not hyphenated?

 Yes No If so, what name(s) have you used? _____4. If so, have you used either of these names alone as your last name (i.e., if your name is Robert Jones-Smith, have you ever referred to yourself as either just Robert Jones or Robert Smith)? Yes No

If so, what last name(s) have you used? _____

5. Have you ever used your name in a format different than first name, middle initial or middle name (or neither), followed by your last name? Yes No

If so, which format(s) have you used? _____